IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

Crl.L.P..No. 682 of 2006()

ST..311/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT III, KOZHIKODE

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PETITIONER/COMPLAINANT:

P.P.MANOHARAN, S/O. CHOYI,
CHAITHANYA HOUSE, KANNANKARA P.O.,
CHELLANUR.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS: ACCUSED & STATE

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1. O.MANZOOR, S/O. MUHAMMED,
OLIYIL HOUSE, (SPECIAL GRADE ASSISTANT),
KERALA STATE FINANCIAL ENTERPRISES OFFICE,
MAVOOR ROAD, CALICUT-1.)

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. C.M. NAZAR - R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 23/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 682 OF 2006

Dated this the 23rd day of January, 2007

O R D E R

This petition for leave to appeal was filed by the complainant in S.T.No.311 of 2005 on the file of the Judicial First Class Magistrate's Court III, Kozhikode.

2. The complaint was filed under Section 138 of the Negotiable Instruments Act, 1881 alleging that Ext.P1 cheque issued by the first respondent to the appellant for a sum of Rs.35,000/- towards discharge of a liability when presented to the bank for encashment was dishonoured for want of sufficient funds in the account of the first respondent. Before the court below, the petitioner was examined as PW.1 and Exts.P1 to P3(b) were produced. On the side of the defence, the first respondent and another witness were examined as DWs.1 and 2 and Exts.D1 to D11 were produced.

3. The case set up by the first respondent was that he had given two cheques to one Brahmanandan in connection with a partnership business in

which the wife of the petitioner was also involved and that the cheque in question was misused by the petitioner. After considering the entire evidence, the trial court found that the alleged transaction between the petitioner and the first respondent was not satisfactorily established. The trial court also found that the first respondent had established his case regarding issuance of Ext.P1 cheque to DW.2. It was also found by the trial court that Exts.D1 and D3 would show that the case set up the first respondent was more probable. In the above circumstances, the trial court acquitted the first respondent - accused. Considering the entire facts and circumstances of the case, this Court is of the view that the findings entered by the court below require no interference.

The Crl. L.P. is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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